

DEPARTMENT OF THE TREASURY

**Office of the Comptroller of the
Currency**

12 CFR Part 37

[Docket No. 03-XX]

RIN 1557-AB75

**Debt Cancellation Contracts and Debt Suspension Agreements;
Change in Compliance Date and Request for Comment**

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of delay in compliance date; request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) has determined to delay the date when compliance is required with certain provisions of the final rule governing debt cancellation contracts (DCCs) and debt suspension agreements (DSAs) in order to allow the OCC to consider issues that have recently been brought to our attention concerning the application of the DCC/DSA rule in the context of closed-end consumer loan transactions where DCCs and DSAs are offered through unaffiliated, non-exclusive agents. The delay of the compliance date applies only to the extent and to the types of transactions described in this document. In all other circumstances, national banks are required to comply with the DCC/DSA rule as of June 16, 2003, which is the date on which the rule takes effect. The OCC also is inviting comment on issues raised by national banks related to the sale of DCCs and DSAs in connection with closed-end consumer loans offered through such non-exclusive agency relationships.

DATES:

Compliance date: The compliance date for certain provisions in 12 CFR part 37 published at 67 FR 58962 (September 19, 2002) is delayed indefinitely. See Supplementary Information for details. OCC will publish a document in the Federal Register announcing the compliance date.

Comment date: Comments must be received by [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: Comments should be directed to Office of the Comptroller of the Currency, Public Information Room, 250 E Street, SW., Mail Stop 1-5, Washington, DC 20219, Attention: Docket No. 03- __; Fax number (202) 874-4448 or Internet address: regs.comments@occ.treas.gov. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to send comments by fax or e-mail when possible. Comments may be inspected and photocopied at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC. You may make an appointment to inspect the comments by calling (202) 874-5043.

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Attorney, Legislative and Regulatory Activities Division, (202) 874-5090; or Pamela Mount, Compliance Specialist, Compliance Division, (202) 874-4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 2002, the OCC published the final rule governing DCCs and DSAs.¹ The final rule establishes consumer protection standards and safety and

¹ 67 FR 58962. The rule is codified at 12 CFR part 37.

soundness requirements that apply with respect to DCCs and DSAs entered into by national banks in connection with extensions of credit they make to customers. The rule prohibits national banks from engaging in certain practices, such as tying and misleading marketing or advertising. It also requires, among other things, that national banks provide standardized disclosures about the DCC and DSA products they offer; that they obtain a customer's acknowledgment of receipt of those disclosures; and that they obtain the customer's affirmative election to purchase the product. In addition, the rule requires a national bank that offers a customer the option to pay the fee for a DCC or DSA in a single payment also to offer that customer a bona fide option to pay the fee on a periodic basis (“periodic payment option”). The final rule takes effect on June 16, 2003.

The OCC recently has received information that the periodic payment option requirement may present unique issues, of which the OCC was previously unaware, in connection with DCCs and DSAs offered by national banks through unaffiliated, non-exclusive agents, with respect to certain types of consumer purchase transactions, most notably car loans made available through automobile dealers.

Accordingly, we have determined that it is appropriate to delay the mandatory compliance date for the periodic payment option in the case of transactions where unaffiliated, non-exclusive agents of a national bank offer that bank's DCC or DSA in connection with closed-end consumer credit, until the OCC has an opportunity to further evaluate the feasibility of approaches to providing appropriate customer protections in connection with that type of transaction. Because the availability of the periodic payment option also triggers certain disclosures, we also are delaying the time for compliance with certain other provisions in the DCC/DSA final rule that are linked to the requirement to

offer a periodic payment option, including the requirement to provide the long form disclosures.

Banks offering DCCs and DSAs through non-affiliated, non-exclusive agents thus remain subject to the following requirements:

- The bank may not extend credit or alter the terms or conditions of an extension of credit conditioned upon the customer's purchase of a DCC or DSA.
- The bank may not engage in any practice or use any advertisement that could mislead or otherwise cause a reasonable person to reach an erroneous belief with respect to information that must be disclosed under this part.
- The bank may not offer DCCs or DSAs that contain terms giving the bank the right unilaterally to modify the contract unless the modification is favorable to the customer and is made without additional charge to the customer; or the customer is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes into effect.
- If a DCC or DSA is terminated, the bank must refund to the customer any unearned fees paid for the contract unless the contract provides otherwise.
- The bank shall calculate the amount of a refund using a method at least as favorable to the customer as the actuarial method.
- If the bank offers the customer the option to finance the fee for a DCC or DSA, the bank must disclose to the customer whether and, if so, the time period during which, the customer may cancel the agreement and receive a refund.
- A national bank must provide to the customer at the time of the initial solicitation of the DCC or DSA, the short form disclosures described in Appendix A to part 37, as

modified to reflect delay of the compliance date for providing the periodic payment option and related changes. The form of the short form disclosures must be readily understandable and meaningful. The short form disclosures also must be included in advertisements and other promotional material for DCCs and DSAs, unless they are of a general nature.

- Before entering into a contract, the bank must obtain a customer's written affirmative election to purchase the DCC or DSA. The written election must be conspicuous, simple, direct, readily understandable, and designed to call attention to its significance.
- A national bank must manage the risks associated with DCCs and DSAs in accordance with safe and sound banking principles.

Description of Provisions Affected

As a result of today's actions, compliance with the following provisions will not be required, until further notice, when a national bank, in connection with closed-end consumer credit² extended by that bank, offers a DCC or DSA through an unaffiliated, non-exclusive agent:

- The requirement to offer a periodic payment option set forth in 12 CFR 37.5.
- The requirement set forth in 12 CFR 37.4(a) that a bank that offers a customer a DCC or DSA without a refund provision also must offer that customer a bona fide option to purchase a comparable DCC or DSA that provides for a refund.
- The long-form disclosure requirement set forth in 12 CFR 37.6.
- The second disclosure set forth in Appendix A to part 37 (Short Form

Disclosures), entitled "Lump sum payment of fee," informing the customer that he or she has the option to pay the fee in a single lump sum or in periodic payments.

- The third disclosure set forth in Appendix A to part 37 (Short Form Disclosures), entitled "Lump sum payment of fee with no refund," informing the customer that he or she has the option to purchase a DCC or DSA with a refund provision.
- The fifth disclosure set forth in Appendix A to part 37 (Short Form Disclosures), entitled "Additional disclosures," indicating that the customer will receive additional information before being required to pay for the DCC or DSA.³
- The requirement to obtain a customer's written acknowledgment of receipt of disclosures set forth at 12 CFR 37.7(a).

The OCC expects that national banks that do not provide long forms disclosures will conspicuously inform customers that they will receive a copy of the contract before they are required to pay for the product.

Request for Comment

As we have indicated, the purpose of this delay in the time for compliance is to permit the OCC to consider how best to address compliance issues that arise under the circumstances described in this notice. To aid our review of these issues, we invite comment on the following specific questions, as well as on any other aspect of this notice that commenters wish to address:

² As used in this notice, the term "closed-end consumer credit" and "closed-end consumer loan" refer to consumer credit other than open-end credit, as defined in the final DCC/DSA rule. These terms do not include loans secured by 1-4 residential real property. See 12 CFR 37.2(a).

³ The sixth disclosure set forth in Appendix A to part 37, provides banks the option of directing customers either to the long form disclosures or the contract for a full explanation of the terms. Clearly, since the long form is not required for the time being, the bank will refer customers to the contract.

1. Please comment on any compliance issues or problems posed by providing the periodic payment option and the associated short and long form disclosures for DCCs or DSAs sold by unaffiliated, non-exclusive agents in connection with closed-end loans.
2. Please explain the types of loan products, e.g., car loans, where this issue arises.
3. What alternative approaches are available to provide appropriate consumer protections?
4. In the case of closed-end loans, should the requirement in the long form disclosures to disclose the total fee for a DCC paid on a monthly or periodic basis be modified? Is there an alternative, effective way to disclose that information that could be added to the rule?

Dated: _____, 2003

John D. Hawke, Jr.,
Comptroller of the Currency.